

REMARKS

Response to Claim Rejections Under 35 U.S.C. §103

Claims 1, 7-10, 15, 16, 19, 71, 74, 76, 83-85, 87, 89 and 97-100 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Miller et al. (U.S. Pat. 6,758,824) in view of Viola (U.S. Pat. No. 6,712,773). The Examiner contends that Miller et al. describes a tissue cutting member 17 which has a tissue cutting angle with respect to the tissue cutting edge of the aperture of about 30 to about 75 degrees and cites Col. 19, lines 15-47 of Miller et al. for support. The Examiner also contends that the probe 15 has a longitudinally oriented tissue cutting edge which engages the tissue cutting edge of the tissue cutting member 17.

Applicants believe that the Examiner has misconstrued applicants claim language as well as the cited Miller et al. reference. Reference is made to Fig. 5 which the Examiner reproduced in the aforesaid Office Action. The cutting edge 35 of Miller et al. is clearly shown in this figure to be perpendicular (i.e. 90°) with respect to the longitudinal axis. Moreover, the cutting edge 35 does not engage the tissue cutting edge of the probe member as contended by the Examiner, but instead cuts tissue by pressing against element 31. It seems that the Examiner is considering the tapered surface 36 as having the requisite tissue cutting angle. That is not what the applicants are claiming. They are claiming the tissue cutting edge as being at an angle of less than 75° with respect to the longitudinal axis. Incidentally, the applicants wish to point out the tissue cutting edge of Miller et al. is on the inside of tubular member 17 so it cannot engage the edge of the aperture of probe member 15 to cut tissue.

The Examiner also contends that Viola discloses a slot 32 in trocar 22. However, element 32 is referred to in Viola as a tissue collecting basket that fits in the opening in the distal end of trocar 22. It is not a slot. Moreover, applicants claims call for a slot in the tissue cutting member and there is no slot in the tissue cutting member of Viola (or Miller either). So even if

Viola is combined with Miller et al. (and there is no suggestion to do so) the combination fails to meet the requirements of applicants' claims.

Viola is a fundamentally different device from Miller et al. For example, the tissue cutting member (58) of Viola is on the outside of the trocar member 22, whereas the tissue cutting member of Miller et al. is on the inside of outer member 15. Moreover, the tissue cutting edges of the tissue cutting members of neither Viola nor Miller et al. engage the cutting edge of a tissue receiving aperture.

Claims 1, 7-10, 15, 16, 19, 71, 74, 76, 83-85, 87, 89 and 97-100 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Miller et al. ('824) in view of Niederer (U.S. Pat. No. 3,902,498). However, Niederer has the same deficiencies as Miller in that the cutting edge 18 of the Niederer device is perpendicular to the longitudinal axis and the cutting edge does not engage the longitudinal edge of a tissue receiving opening or aperture as called for in applicants' claims.

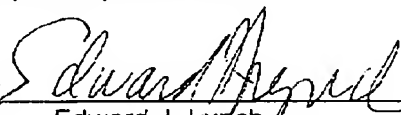
Claims 77-82 and 90-95 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Miller et al. ('824) in view of Viola ('773) and further in view of Majlessi (U.S. Pat. No. 5,871,454). The Examiner contends that it would be obvious to provide a mechanism which has multiple cutting slots to allow for collection of multiple samples. However, applicants' slots in the tissue cutting member are not configured to cut tissue. Moreover, applicants' claims call for the distal tip to have an angled tissue cutting edge that defines a tissue receiving aperture. The distal tip of Majlessi is closed off so it does not have an angled tissue cutting edge. Additionally, the tissue cutting edges of Majlessi do not engage the longitudinal edges of an aperture in the outer member as called for in applicants' claims.

Claims 77-82 and 90-95 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Miller et al. ('824) in view of Niederer ('498) and further in view of Majlessi ('454). This rejection is subject to the same deficiencies as mentioned in the previous paragraph.

Conclusions

None of the cited references teach the features of applicants' claims and the Examiner has cited no cogent reasons why those skilled in the art would combine these references. Even if the combination was suggested the combination of references would not meet all the requirements of applicants' claims. Applicants' pending claims are primarily directed to the embodiment shown in Figs. 19-22 and are believed to be patentable. Reconsideration and an early allowance thereof are earnestly solicited.

Respectfully submitted,

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